No. 320.

In the Supreme Court of the United States

OCTOBER TERM, 1920.

CRESCENT COTTON OIL COMPANY,
Plaintiff in Error,

vs.

THE STATE OF MISSISSIPPI,

WRIT OF ERROR FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI, DEFENDANT IN ERROR.

STATEMENT.

The State of Mississippi, on the relation of the Attorney General, filed a complaint in the Chancery Court of Sunflower County, Mississippi, in 1915, against the Crescent Cotton Oil Company, of Memphis, Tennessee, and C. E. Shelton, local manager of one of said corporation's gins, located in Sunflower County, Mississippi. The bill alleges that the Oil Company was a corporation created under the laws of Tennessee, and engaged in operating an oil mill at Memphis, in said State, and that it also did a ginning business at numerous points in the State of Mississippi, and more particularly at Ruleville, in said State; and that C. E. Shelton was the manager of said local gin. That the corporation

was not operating an oil mill in the State of Mississippi, but was operating a gin and that the operation of the gin was in violation of Chapter 162 of the Laws of 1914, being "An Act to prohibit cotton oil companies and cotton compress companies, and other persons, associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton seed products and by-products and compresses from owning, buying, leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties, and for other purposes."

This Act was approved March 28th, 1914, and became effective from and after its passage.

The bill properly alleges the facts bringing the said corporation within the terms of the Act.

The Complainant further alleges that the charter of the Crescent Cotton Oil Company conferred no power on it to own, lease, operate or acquire cotton gins, and that under the laws of Tennessee a corporation could only do those things which it was given power to do in its charter, and that it could do no more in the State of Mississippi.

The pertinent part of such charter (Tr., 16) is as follows:

> "Organized for the purpose of manufacturing oil and meal and lint from cotton seed and for manufacturing into numerous forms the said oils or the said meal or lint or any part thereof, and for the purpose of buying and selling cotton seed or the products thereof, and for dealing in such utensils and machinery as may be proper and appropriate for the manufacture, handling, growth and manipulation of cotton or cotton seed, and the products thereof."

It is alleged that more than a reasonable time has expired since the passage of the said Act, in which to dispose of the gin plants in Mississippi for cash

or credit, and that a *bona fide* offer of more than the fair value has been made for the gin plant at Ruleville, in the State of Mississippi, and that this offer was refused, and that said Oil Company refused to fix any price whatever for the said gin plant.

The bill further alleges that the Oil Company, through its local manager, Shelton, at Ruleville, Mississippi, was engaged in an attempt to monopolize the gin business, and had been so engaged on the date the Act was approved, and previous thereto; and that since March 28th, 1914, the ownership and operation of a gin by an oil mill has been made a violation of the laws of the State of Mississippi.

It is also alleged that the Oil Company operated its gin at Ruleville, Mississippi, under the fictitious name of "Farmers' Gin Company," for purposes of deception as to the actual ownership of the gin property.

An attachment in Chancery, and an injunction to restrain further operation of said gin, was prayed for; also, that the said corporation be enjoined from doing a local business in Mississippi, and for penalties. Writs of attachment and injunction were issued and served on the defendant.

Defendant's answer (Tr., 10) is substantially as follows:

That the Act is void, because the Company had invested in property in this State prior to the passage of the statute, and to prevent the use of this property by the defendant would be to deprive the defendant of its property without due process of law.

That the Act denied to defendant the equal protection of the law, guaranteed by the Constitution of the State of Mississippi, and of the United States, in that a corporation engaged in the oil mill, or compress business cannot own or operate a gin, while an individual engaged in the same business is only denied the right to become interested in a corporation gin. And the defendant denies that its charter

does not confer upon the corporation the right to operate gins.

The Chancery Court entered a decree dismissing the bill, and on appeal to the Supreme Court of Mississippi, this decree was reversed, and the cause remanded for a hearing on its merits by the Chancellor. The opinion of the Court is found on page 25 of the Transcript.

On this second hearing, the defendant amended its answer, alleging that prior to, and at the time of, the passage of the Act under review, the Oil Company was engaged in the operation of a cotton oil mill at Memphis; and that the gin was operated in Mississippi only for the purpose of procuring seed for the oil mill situated in Tennessee; and that ownership and operation of said gin was a means and instrumentality made use of by defendant in carrying on its business of cotton seed buyer, and interstate shipper of cotton seed,—that the operation of the gin was a necessary incident thereto, and that to deprive defendant of such right would greatly burden and destroy its business of interstate commerce in the shipment of cotton seed from the State of Mississippi, into the State of Tennessee, and in conflict with the clear purpose of the clause of the Federal Constitution.

The opinion of the Supreme Court of the State of Mississippi (Tr., 119) substantially sets out the testimony in the case, and is included in this brief as an appendix.

The Chancellor decreed that the defendant had violated the Anti-Gin Statute, and also Anti-Trust Law of Mississippi, imposed a fine of $1900.00 for violating the Anti-Gin Statute, and a fine of $100.00 for violating the Anti-Trust Statute.

The decree further provided (Tr., 112) "That the said Crescent Oil Company be and the same is hereby perpetually enjoined from doing an intrastate or local business in the State of Mississippi, and its right to do such intrastate or local business in

this State be and the same is hereby forfeited, and the defendant is perpetually enjoined from a violation of the Anti-Trust Statutes of the State of Mississippi."

On the second hearing of this case in the Supreme Court of the State of Mississippi, from which this Writ of Error is prosecuted, the Supreme Court of Mississippi affirmed the decree of the lower Court, except as to the Anti-Trust feature, which part of the decree was reversed.

ARGUMENT.

FIRST: Public ginning is subject to regulation under the police power of the State.

The Act in question (Ch. 162, Laws of Mississippi, 1914) was passed in aid of the Anti-Trust Laws of the State, the main purpose being to prevent a monopolization of the gin business by the oil mills of the State, and the consequent reduction in the price of cotton seed throughout the State.

This Court has held, in the case of *Wilson v. New*, 243 U. S., 332; 37 Sup. Ct. Rep. 298; 61 L. Ed,. 755, that it was entirely proper for a Court to consider conditions which made the passage of a law necessary; and in that case the entire history of the circumstances leading up to the passage of the so-called "Adamson Law", was gone into by this Court.

In *U. S. v. Delaware & Hudson Co.*, 213 U. S. 366; 53 L. Ed., 836, the Court, speaking through Chief Justice White, said:

> "The relevant industrial conditions which, being matters of common knowledge, may be judicially noticed."

At the time of the passage of the Act under review, it was a matter well known to the Legislature that there was then a pending suit against various

oil companies operating in Mississippi because of a violation of our Anti-Trust Statute, "and that a large majority of the oil mills were engaged in an effort to crush out the independent gins in Mississippi, and thereby monopolize the buying of cotton seed in the State. Testimony was shown before the Senate and House Committees to the effect that oil mills were operating gins, and that where they had no competition were charging from $2.50 to $4.00 per bale for ginning, exclusive of labor; and that at competitive points the price of ginning was from $1.00 to $2.00, including labor. At other places the ginning was from $1.00 to $2.00, provided the seed was sold to the oil mill operating the gin; and was from $2.50 to $4.00 if the seed were sold to independents. In other places the ginning was done without cost, if the seed were sold to the oil mill operating the gin; whereas, a charge of $2.50 to $4.00 was made for ginning if the seed were taken away from the gin and sold to outside parties.

The consequence was that hundreds of gins in the State of Mississippi had been forced to go out of business during the period ranging from 1905, down to 1914." (Quoting from State's brief on first hearing before Mississippi Supreme Court).

The ginning of cotton for the public clothes such gins with a public interest which subjects it to governmental regulation under the police power of the State.

Tallassee Oil & Fertilizer Co., et al., v. Holloway, 76 So., 434, and authorities cited.

The leading case on the subject of when private property becomes so clothed with public interest as to make it of public consequence, is *Munn v. Ill.*, 94 U. S., 113; 24 L. Ed., 77.

Counsel for Plaintiff in Error, on the first appeal of this case in the Supreme Court of Mississippi, in his brief admitted that a public ginning business is subject to regulation by the State.

SECOND: Plaintiff in Error has no charter power to operate a gin in Tennessee, or elsewhere, and, therefore, cannot question the constitutionality of the statute under review.

This proposition lies at the very threshold of this case, and if it be disposed of adversely to Plaintiff in Error, no further question need arise in a proper determination of the controversy; so that it would not be necessary for this Court to consider the constitutionality of the Statute involved. If the Plaintiff in Error is without charter power to operate gins in Tennessee, or elsewhere, it necessarily follows that it is in no position to question the constitutionality of a Statute relative to the ownership of cotton gins.

The part of the charter that is pertinent to this point reads as follows:

> "Organized for the purpose of manufacturing oil and meal and lint from cotton seed and for the *manufacturing into numerous forms* the said meal or *lint or any part thereof*, and for the purpose of buying and selling cotton seed or the products thereof, and for *dealing* in such utensils as may be proper and appropriate for the *manufacture*, handling, growth and manipulation of *cotton* or *cotton seed* and the products thereof." (Italics ours).

It is confidently submitted that nowhere in these powers can it be said that the Crescent Oil Company is authorized to operate a gin.

The corporation is authorized in this charter, amongst other things, to manufacture "lint or any part thereof." The process of ginning is that the seed cotton—that is, cotton just as it is picked from the plant, with the seed and cotton still interwoven and intact—is taken to the gin, removed from the wagon by suction conveyor, then into the ginning machinery, where the seed are separated from the cot-

ton,—the lint cotton going to the baling press, and the seek back into the wagon, or into the seed house. There is no such thing as lint cotton until *after* the seed cotton has been ginned, and the seed removed from the seed cotton.

The charter in question does authorize the manufacture of lint cotton into such forms as Plaintiff in Error might desire. This charter would authorize the manufacture of lint (lint cotton), I take it, into cloth or any other commodity which uses lint cotton in its manufacture. But the act in question, to-wit, ginning, must first be done and concluded before there is lint cotton to manufacture,—an entirely separate and distinct operation.

"Manufacturing * * * * lint from cotton seed" is another separate and distinct operation from the ginning of cotton, and arises after the seed cotton has already been ginned. In fact, the separation of lint from cotton seed is, in most cases, never done at a cotton gin. This operation of separating the lint from cotton seed, and obtaining thereby seed and "linters," is a necessary part of the machinery of an oil mill. Before the seed are hulled and ground in an oil mill, the seed which have been obtained by the oil mill are taken through special gin machinery, by which all the remaining lint is removed from the seed, and a by-product, "linters," is obtained. These "linters" are principally used in the manufacture of explosives.

It seems clear, therefore, that the charter in question certainly does not, expressly or impliedly, authorize the ginning of cotton seed, the operations which are authorized as to the manufacture of lint or any part thereof, or manufacturing lint from cotton seed, being entirely separate and subsequent operations, disassociated from, and disconnected with the ginning of seed cotton.

It may be urged by Plaintiff in Error that the charter power to gin seed cotton is a necessary incidental power to an oil mill. It is a fact of com-

mon knowledge, as well as a part of the record in this case, that it is not necessary to operate a gin in connection with an oil mill or compress. In fact, scores of oil mills in the State of Mississippi and elsewhere, are operated without having a cotton gin for ginning seed cotton as a part of its plant. Seed may be, and are, purchased in the open market, so that it is not necessary to operate a gin in order to obtain the seed, with which to do one of the things authorized in the charter, to-wit, the manufacture of lint cotton.

The rule is that a charter only confers such *incidental powers as are necessary to carry out the powers expressly conferred.*

The rule is stated in the note to *Huntington v. Savings Bank*, 96 U. S., 388; 24 L. Ed., 777, to be:

> "A corporation, being a mere creature of the law, possesses only those properties which the charter confers upon it, either expressly or as incidental to its very existence. Corporations have only the powers specifically granted by the Act of incorporation, or such as are necessary for the purpose of carrying into effect the powers expressly granted."
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> *Dart. Coll. v. Woodward*, 17 U. S., (4 Wheat.) 518.

The ginning of seed cotton is neither a necessary part of an oil mill, nor a right incidental to a charter granted to operate an oil mill; and, therefore, it must follow that under the charter the Plaintiff in Error had no charter power, express, implied or incidental, to operate a cotton gin in Tennessee, or elsewhere. It cannot be contended that "Dealing in such utensils and machinery as may be proper and appropriate for the manufacture," etc., gives the Oil Company the power to operate machinery which will separate the cotton seed into lint cotton and seed. "*Dealing*" is the participle of the verb "*deal*" and the noun "*dealer.*" A *dealer*, in the

statutory sense of the word, is not one who buys to keep, or makes to sell,—but one who buys to sell again. In other words, *dealing,* in this charter, only gives Plaintiff in Error the right to engage in the *buying and selling* of machinery of the kind mentioned in such charter. Bouvier's Law Dictionary, Vol. 1, 775; Words and Phrases, 2 Ed., Vol. 1, 1223.

The Plaintiff in Error, not being authorized to operate a cotton gin, cannot, therefore, question the constitutionality of a Statute relative to a business in which a corporation has no right or authority to engage.

Louisville & Nashville v. Finn, 235 U. S., 601; 59 L. Ed., 379.

THIRD: A State has the right to expel a foreign corporation after it has entered and commenced doing business therein, provided no right guaranteed by Federal Constitution is denied.

The State of Mississippi has plenary control over domestic corporations, as is evidenced by the Constitution of Mississippi:

> "*Section 178.* Corporations shall be formed under general laws only. The Legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so. Provided, however, *that no* injustice shall be done to the stockholders. No charter for any private corporation for pecuniary gain shall be granted for a longer period than ninety-nine years," etc.

Section 914, Code 1906 (Sec. 4088, Hemingway's Code), is as follows:

"Section 914. *Of foreign corporations.*—Corporations which exist by the laws of any other State of the Union, by the Acts of Congress, or the laws of any foreign country, may sue in this State by their corporate names, and they shall also be liable to be sued or proceeded against, by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against. And the acts of the agent of any such foreign corporation shall have the same force and validity as the acts of agents of private persons; *but such foreign corporations shall not do or permit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy.*" (Italics ours).

The power to regulate public ginning of cotton is the putting into effect the public policy of the State as oil mills, compresses and gins. The Legislature, with the knowledge which it had of existing conditions, believed that it was contrary to the public welfare of the State of Mississippi for an oil mill or a cotton compress, to own and operate a cotton gin. The States have full power to regulate, within their limits, matters of internal policy, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of their people.

Esconaba Co. v. Chicago, 107 U. S., 678; 27 L. Ed., 442.

Hadacheck v. Sebastian, 239 U. S., 394; 60 L. Ed., 348.

Barbier v. Connolly, 113 U. S., 27; 28 L. Ed., 923.

The right of a State to exclude a foreign corporation from its borders, so long as no principle of the Federal Constitution is violated in such exclusion, has been repeatedly recognized in the decisions

of this Court, and the right to prescribe conditions upon which a corporation of that character may continue to do business within the State, unless some contract right in favor of the corporation prevents, or some constitutional right is denied in the exclusion of such corporation, is but the correlative of the power to exclude.

Hammond Packing Co. v. Arkansas, 212 U. S., 322; 53 L. Ed., 530.

Baltic Mfg. Co. v. Mass., 231 U. S., 83; 58 L. Ed., 133.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass., 35.

Fire Ass'n. of Phila. v. N. Y., 119 U. S., 110; 30 L. Ed., 342.

So. Bldg. & Loan Ass'n. v. Norman, 98 Ky., 314; 56 Am. St. Rep., 373; 32 S. W., 954; 31 L. R. A., 43.

Nat. Council U. A. M. v. St. Council, 203 U. S., 151; 51 L. Ed., 132.

R. R. Co. v. State, 107 Miss., 597; 65 So., 881.

In *Paul v. Virginia,* 8 Wall., 168; 19 L. Ed., 357, on page 360, the Court said:

> "Having no absolute right of recognition in other States, but depending for such recognition upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. *They may exclude the foreign corporation entirely,* they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests within their discretion." (Italics ours).

FOURTH: Property acquired prior to passage of the Act does not deprive the State of its power to regulate and exclude under the police power.

This point was most seriously argued by the Oil Company on the first appearance of this case in the Supreme Court of Mississippi, but in brief of Plaintiff in Error in this Court it has received only casual attention.

If the State does not have this power, the result would be total stagnation in the regulation and control of foreign corporations doing business in this State, since such control would be limited by the public policy as existing at the time such corporation entered and commenced doing business in the State. The logical sequence of such a situation would be that the State could not then control domestic corporations under a progressive and changing public policy, for the reason that the domestic corporations would then be discriminated against in favor of a foreign corporation. The Crescent Cotton Oil Company came into Mississippi with a knowledge of Section 914 of the Code of 1906 (Sec. 4088, Hemingway's Code), above set out.

That there can be no merit in the proposition that the property being legally acquired prior to the passage of this Act, the State, therefore, could not regulate and exclude such corporation, under its police power, is conclusively shown by decisions of this Court.

U. S. v. Delaware & Hudson Co., 213 U. S., 366; 53 L. Ed., 836.

U. S. v. Reading Co., et al., 226 U. S., 324; 57 L. Ed., 243.

Delaware L. & W. R. R. Co. v. U. S., 231 U. S., 363; 58 L. Ed., 269.

FIFTH: Application of Chapter 162, Laws of 1914, of the Mississippi Legislature, to Plaintiff in Error, prohibiting it from owning and operating a cotton gin in this State for the purpose of more easily procuring cotton seed for its oil mill in Memphis, Tennessee, is not to burden or destroy its interstate commerce.

(1) *Ginning is manufacturing.*

The Mississippi Supreme Court definitely decided that ginning is manufacturing seed cotton into lint cotton. (Tr. 123).

In *Friday v. Hall & Kaul*, 216 U. S., 449; 54 L. Ed., 56[illegible] the Court, speaking through Justice Lurton, said:

> "'Manufacturing' has no technical meaning. It is not limited by the means used in making, nor by the kind of product produced. In *Kidd v. Pearson*, 128 U. S., 1, 20; 32 L. Ed., 346, 350; 2 Ints. Com. Rep. 232; 9 Sup. Ct. Rep. 6, Mr. Justice Lamar said that, 'Manufacturing is transformation—the fashioning or raw material into a change of forms for use.'"

In *State v. Am. Sugar Refining Co.*, 108 La., 603; 32 So. [illegible]5, it was held that the refining of raw sugar was manufacturing. The opinion of the Court in that case contains an exhaustive discussion of the meaning of the word "Manufacture," and a collation of the authorities on the subject of what constitutes manufacture.

(2) *Manufacturing is not a part of interstate commerce.*

Brief of Plaintiff in Error (p. 13) states their position on this point as follows:

> "We are not insisting that ginning or manufacturing is interstate commerce, but we are insisting, in the light of the decisions of this

> Court, to which we call attention, that the operation of a gin was a necessary incident, and was absolutely necessary and essential to its carrying on that business successfully, and to deny to it the right to operate a gin was to greatly burden its interstate commerce directly, and, in fact, to destroy it, and not only that, but to *affect the operation of and to burden the business carried on by it in the State of Tennessee.*"

This position admits that ginning *is* manufacturing, and that *it is not* interstate commerce.

Plaintiff in Error contends, however, that ginning is a necessary incident to the operation of the oil mill, and absolutely necessary and essential to carry on that business successfully; and that to deny the Oil Company the right to operate the gin is to directly burden its interstate commerce, and in fact, to destroy it.

The contention that the operation of the gin is a necessary incident to the successful carrying on an oil mill business, is completely controverted by the fact that, scores of oil mills in the State of Mississippi have complied with the Act under review, and are still conducting the business of an oil mill successfully. A few oil mills have been compelled by court proceedings to comply with Chapter 162 of the Laws of 1914, and these corporations are still successfully doing an oil mill business. It is also true that many oil mills never, at any time, owned and operated cotton gins.

This would seem to dispose of the contention that the operation of a cotton gin is a *necessary* incident to the operation of an oil mill.

Plaintiff in Error, by its statement of contention, admits that the Act would be valid unless it *directly* burdens its interstate commerce.

Manufacturing corporations, and all other corporations whose business is of a local or domestic nature, are subject to the control of the State.

Crutcher v. Ky., 141 U. S., 47; 35 L. Ed., 649.

An examination of some cases wherein a similar contention has been made, that the business was so related to interstate commerce as to deprive the State of the right of regulation and control, will demonstrate conclusively to this Court that the proposition advanced by Plaintiff in Error in the instant case is unsound.

In *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S., 617; 47 L. Ed., 333, this Court had under consideration a Wisconsin statute which required foreign corporations to file a copy of the charter with the Secretary of State, and to pay a small fee as a condition of doing business there. The plaintiff made a contract with the defendant, in which it was agreed that the plaintiff should supervise a glue factory, to be built by the defendant; that the plaintiff should have the management of the manufacturing in the same; that, amongst other things, it should control, handle and sell the output of the factory. It was said in that case (as it is in the case at bar) that the contract in suit, as carried out, was concerned, in part, with interstate commerce, and, therefore, was free from the operation of the Wisconsin statute. Justice Holmes, speaking for the Court, said:

> "The portion of the contract that called for the carrying on of business in Wisconsin was not so concerned, and the inseparable provisions as to selling left it to chance or to extrinsic business considerations whether the contemplated traffic should go outside the State or not. The foundation of the commerce outside the State was doing business within it. The superintendence and manufacture had to come before the sale. * * * * The interference with the regulation of commerce between the States is more remote than when a bridge between two States, or the franchise of a domestic corpor-

43

ation created with the intent to carry on such commerce, is taxed. See *Henderson Bridge Co. v. Henderson*, 173 U. S., 594, 622, 623; L. Ed., 823, 834; 19 Sup. Ct. Rep., 553; *Central P. R. Co. v. Cal.*, 162 U. S., 91, 119, 125, 126; 40 L. Ed., 903, 913, 915; 16 Sup. Ct. Rep., 766. In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn, and distinctions of degree must be made. See, further, *Kidd v. Pearson*, 128 U. S. L., 21; 32 L. Ed., 346; 2 Inters. Com. Rep. 232; 9 Sup. Ct. Rep. 6; *Coe v. Errol*, 116 U. S. 517, 525, 527; 29 L. Ed. 715, 718; 6 Sup. Ct. Rep. 475; *Tredway v. Riley*, 32 Neb. 495; 49 N. W. 268."

The right of a State to prescribe generally, and by its Constitution and laws, the terms upon which a corporation shall be allowed to carry on its business in the State, has been settled by this Court.

Cooper Mfg. Co. v. Ferguson, 113 U. S., 727; 28 L. Ed. 1137.

Bank v. Earle, 13 Pet. 519; 19 L. Ed., 274.

Paul v. Va., 8 Wall., 168; 19 L. Ed., 357.

Ducat v. Chicago, 19 Wall., 410; 19 L. Ed., 972.

In the Cooper case, supra, the concurring opinion, while agreeing with the majority opinion in result, based the conclusion on the ground that the Colorado statute was an interference with interstate commerce. In this state of the case, the concurring Justices said:

"It is quite competent, no doubt, for Colorado to prohibit a foreign corporation from acquiring a domicile in that State, and *to prohibit it from carrying on in that State its business of manufacturing.*" (Italics ours).

"Carrying on interstate commerce" does not include manufacturing and trading companies making interstate shipments. Judson on Interstate Commerce, Sec. 15.

Tredway v. Riley, 32 Neb., 495; 49 N. W., 268.

"The business of a manufacturing company, although the manufactured product is sold in another State and foreign countries, is not interstate commerce. *Kidd v. Pearson,* 128 U. S., 1; 32 L. E., 346; *U. S. v. Knight,* 156 U. S., 1; 39 L. Ed. 325."

Judson on Interstate Commerce, Sec. 7.

Judson on Interstate Commerce, Section 315, in discussing the Anti-Trust Act of 1890, as interpreted by the Court in *U. S. v. Knight,* 156 U. S., 1; 39 L. Ed., 328, says:

"The Court said that the monopoly and restraint denounced by the Act were the monopoly and restraint of interstate trade and commerce. Manufacture was not commerce. Commerce succeeded to manufacture, and was not a part of it, and sale is an incident of manufacture, therefore distinguished from commerce."

That this eminent author understood correctly the decision is clearly shown by an excerpt from the opinion, wherein the Court, speaking through Chief Justice Fuller, said:

"Doubtless the power to control the manufacture of a given thing involved in a certain sense the control of its disposition, but this is a *secondary and not a primary sense*; and al-

> though the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it." (Italics ours).

Capital City Dairy Co. v. Ohio, ex rel. Atty Gen., 183 U. S., 238, 46 L. Ed., 171, involved the validity of a statute of the State of Ohio in regard to the manufacture of oleomargarine. The answer of the defendant, amongst other things, alleged that:

> "All the oleomargarine thus manufactured during the period stated, was made, not for sale in the State of Ohio, but for sale in other States, and was wholly sent out of the State of Ohio to such other States; that the statutes * * * * were repugnant * * * * to Section 8 of Article 1 of the Constitution of the United States * * * *."

In passing upon this contention, this Court, speaking through Chief Justice White, said:

> "The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All of the acts of the corporations which were complained of related to oleomargarine *manufactured by it in the State of Ohio in violation of the law of that State, and therefore operated on the corporation within the State, and affected the product manufactured by it before it had become a subject of interstate commerce. Kidd v. Pearson*, 128 U. S. 1; 32 L. Ed. 346; 9 Sup. Ct. Rep. 6; 2 Inters. Com. Rep. 232; *U. S. v. E. C. Knight Co.*, 156 U. S. 1; 39 L. Ed. 325; 15 Sup. Ct. Rep. 249." (Italics ours).

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to con-

trol the States in their exercise of police power over local trade and manufacture.

Hammer v. Dagenhart, 247 U. S., 251; 62 L. Ed., 1101.

In *Hammer v. Dagenhart, supra,* the Court, in marking out the distinction between domestic commerce and interstate commerce, when products were manufactured in one State, and shipped into another, said:

"'Commerce consists of intercourse and traffic * * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped, or used in interstate commerce, make their production a part thereof. *Delaware, L. & W. R. R. Co. v. Yurkonis,* 238 U. S. 439; 59 L. Ed. 1397; 35 Sup. Ct. Rep. 902.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation. 'When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State.' Mr. Justice Jackson, *in re Greene,* 52 Fed., 113. This principle has been recognized often in this Court. *Coe v. Errol,* 116 U. S., 517; 29 L. Ed. 715; 6 Sup. Ct. Rep. 475; *Bacon v. Illinois,* 227 U. S., 504; 57 L. Ed. 615; 33 Sup. Ct. Rep. 299, and cases cited. If it were otherwise, all manufacture intended for

> interstate shipment would be brought under Federal control to the practical exclusion of the authority of the States,—a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd v. Pearson*, 128 U. S., 1, 21; 32 L. Ed. 346, 350; 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6."

Kidd v. Pearson, 128 U. S., 1; 32 L. Ed. 346, is one of the leading cases of this Court, distinguishing between manufacture and commerce. As was stated by the Court in that case:

> "If it be held that the term (meaning the regulation of commerce between the States) includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also apply to all progressive industry that contemplates the same thing. The result would be to invest Congress, to the exclusion of the State, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining—in short,—every branch of human industry. For is there one of them that does not contemplate more or less, an interstate or foreign market."

The Mississippi Supreme Court quoted so extensively from this case that, for the convenience of this Court, I am setting out as an Appendix to this brief, the opinion of the Mississippi Supreme Court on the second and final hearing of this cause.

Hammer v. Dagenhart, supra, seems to be on all-fours with the case at bar, and was extensively quoted from by the Supreme Court of Mississippi in this case (Tr., 125).

It only remains to briefly discuss the cases relied upon by Plaintiff in Error to sustain its contention that the regulation of cotton ginning by the State

constitutes a direct burden on the interstate commerce business of Plaintiff in Error. These cases are:

Pullman Palace Car Co. v. Kansas, 216 U. S. 68; 54 L. Ed., 386.

Western Union Tel. Co. v. Kansas, 216 U. S., 34; 54 L. Ed. 369.

Ludwig v. Western Union Tel Co., 216 U. S. 97; 54 L. Ed. 423.

Harrison v. R. Co., 232 U. S., 318; 58 L. Ed., 621.

These cases, in my judgment, throw no light upon the proposition before this Court. The cases all relate to corporations *directly* engaged for hire in the transportation of intelligence or commerce or persons between the States; and their capital invested in this business was of such a permanent and fixed nature that the local business was interstate commerce of a quasi-public character.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass., 35; 49 Ann. Cas. 1913 C, 805; 98 N. E. 1063.

As was stated by the Mississippi Supreme Court, it is to be noted that these cases are ones in which the principal business of the corporation was interstate business, though these corporations also did an intrastate business. While in the case at bar it is admitted by counsel for Plaintiff in Error that the ginning of cotton is not interstate commerce. The distinction would seem to be clear and compelling. It will be noted that the Harrison case in 232 U. S., is one holding that the right of a foreign interstate railroad company to remove the case to the Federal Court under proper circumstances, cannot be prohibited by a State statute.

The cases cited by counsel for Plaintiff in Error, are ample authority for the proposition that the burden must be *direct and primary*, and *not an incidental or secondary burden upon interstate commerce*, in order to be obnoxious to the Constitution.

On page 20 of the brief for Plaintiff in Error, this statement occurs:

> "It is conceded that the operation of the gin had become absolutely necessary to enable the company to carry on this business with success."

This is not conceded, and the State submits, with the utmost confidence, that the actual facts with reference to the operation of oil mills in the State of Mississippi at this time shows exactly the opposite to be true—that is, that it is not necessary, to carry on the oil mill business with success, to operate a gin.

On page 21 of their brief it is argued that the operation of a gin is necessary, and has been recognized by the Act itself, in allowing ginneries to be operated at the domicile of the oil mill or compress. The inference is not justified. The Legislature, having before it all the facts, evidently was of the opinion, and believed, that the evil to be remedied consisted in the operation and ownership of places other than, and apart from, the domicile of the corporation.

(3) *Purchase of seed is not interstate commerce; the ginning of seed is not interstate commerce. Interstate commerce begins when seed are delivered to carrier for shipment to another state.*

It will not be argued by counsel for Plaintiff in Error that the mere purchase of seed is interstate commerce; and it is expressly admitted in their brief that the ginning of cotton is not interstate commerce (Brief, 13). The Mississippi Supreme Court found, as a fact, that the purchase of cotton seed is one transaction; that the ginning of the seed cotton is another transaction; and that the shipping of these seed is still another transaction. (Tr. 123). It was necessary, according to the opinion of that Court, for the Plaintiff in Error to do three things, before interstate commerce began, namely, (1) pur-

chase the seed, (2) gin the cotton, (3) deliver the seed to the carrier for interstate shipment.

Many cases from this Court could be cited as sustaining the proposition that interstate commerce does not commence until delivery of the article to be transported to the carrier.

The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered or offered to be delivered, to the consignee.

> *Covington Stock Yard Co. v. Keith,* 139 U. S., 128; 35 L. Ed. 73.
>
> *U. S. v. Union Stock & Transit Co.,* 226 U. S., 286; 57 L. Ed. 226.

In the late case of *McCluskey v. Marysville & Northern Railway Co., et al.,* 243 U. S. 36; 61 L. Ed. 578, a logging railroad over which its owner carries its own logs, in its own cars, from its own timber land within the State, to a tidewater point, also within the State, where such logs are dumped into the water and sold, some of them going to points outside the State, and the balance were rafted and taken by tugs to the defendant's mill, where they were manufactured into timber, which was thereafter sold, both in local and foreign markets, was held not to be engaged in interstate commerce within the meaning of Employers' Liability Act.

Chief Justice White, delivering the opinion of the Court, quoted with approval from the leading cases of *Coe v. Errol,* 116 U. S. 517; 29 L. Ed. 715; 6 Sup. Ct. Rep. 475 and the Daniel Ball, 10 Wall., 557; 19 L. Ed. 999. We quote from the opinion:

> "The movement of the poles did not become interstate commerce until, by the act of the purchasers thereof, the poles were started on their way to their destination in another State or country. *The beginning of the transit which constitutes interstate commerce, 'is defined in*

Coe v. Errol to be the point of time that an article is committed to a carrier for transportation to the State of its destination, and started on its ultimate passage.' General Oil Co. v. Crain, 209 U. S., 211; 52 L. Ed. 754; 28 Sup. Ct. Rep. 475." (Italics ours).

Whether a shipment was at a given time in interstate commerce, is one of fact, and not of intention of the shipper.

So. Pac. Co. Arizona, 249 U. S. 472; 63 L. Ed. 713.

Arkadelphia Milling Co. v. St. Louis S. W. R. Co., 249 U. S. 134; 63 L. Ed. 517.

Judson on Interstate Commerce, Sec. 6.

(4) *Ultimate intention of manufacturer to ship manufactured article into another State does not constitute interstate commerce.*

This proposition has been clearly stated in *Keystone Watch Co. v. Commonwealth,* 212 Mass., 50. The Court said:

"Manufacture is the dominant business of the petitioner in this commonwealth. Incidentally, some kind of commerce to some extent may be necessary to the conduct of most manufacturing business, but it is subsidiary, rather than primary. *Kidd v. Pearson,* 128 U. S. 1, 20; *U. S. v. Knight,* 156 U. S. 1, 14. The maintenance here of the petitioner's plant in Massachusetts is for a distinct department of its manufacture. Although manufacture contemplates commerce, that is a subsequent stage. Its manufacturing business is entirely separable from the commerce which follows and which is involved in the sale of the product. *Baltic Mining Co. v. Mass.,* 231 U. S. 68; 58 L. Ed. 67."

If ginning of seed cotton be a necessary incident to the interstate commerce business of the Plaintiff

in Error, by the same reasoning it would necessarily follow that the farmer transporting the seed cotton from his farm to the gin would be engaged in interstate commerce; that the laborer who picked the cotton in the field, would also be engaged in interstate commerce; and that every person and operation of this cotton, to be ginned, and afterwards to be transported as a part of interstate commerce, would be a necessary incident thereto. This leads to the unthinkable situation whereby the State would be deprived of all control over its internal affairs.

It seems to me clear, from the record in the case, that there is, in a legal sense, no inextricable connection between the interstate and intrastate commerce of Plaintiff in Error. They are not so interwoven that they cannot be separated. Otherwise, every kind of business, when both interstate and domestic commerce are conducted, merely by reason of commingling, might be regarded as inseparable, Unless this is so, any discussion of the regulation of foreign corporations by the State would be idle, for it could all be avoided by conducting an interstate and domestic business at the same place. Simply because the interstate and intrastate commerce business may be conducted together more profitably or conveniently, does not render them inextricably interwoven, nor the one necessarily incident to the other.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass. 35.

SIXTH: The doctrine that a state may not, in any form, or under any guise, directly burden prosecution of interstate commerce is not infringed in Act under review.

(1) A state may, in a great variety of ways, affect commerce and persons engaged in it, unless it

imposes a *direct* burden upon interstate commerce, or *directly* interferes with its freedom.

Kidd v. Pearson, 128 U. S., 1; 32 L. Ed. 346.

(2) *The control of manufacture of a commodity involves, in a certain sense, the control of its disposition, but this is only in a secondary sense, and affects commerce only incidentally and indirectly.*

U. S. v. Knight, 156 U. S. 1; 39 L. Ed. 328.

(3) *There must be some point of time when the commodity will cease to be governed exclusively by domestic law and protected by the national law of commercial regulation, and the moment at which such commodity commences final movement for transportation from State of origin to that of destination is such determining point.*

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346.
Coe v. Errol, 115 U. S., 517; 29 L. Ed. 715.
Hammer v. Dagenhart, 247 U. S. 211; 62 L. Ed. 1101.

(4) *Cotton seed are blown into a seed house during the process of ginning, until a sufficient quantity be obtained to make a carload shipment, and then such seed are loaded into freight car, and thereby start as a part of commerce.*

The record in this case will disclose that seed cotton is brought to the gin, carried by a suction conveyor into the gin machinery, where the lint cotton is separated from the seed, and the cotton seed are then blown into a seed house, if the Gin Company has purchased the seed before the ginning operation began, otherwise they are conveyed to a trap, and, after the ginning operation is concluded, dumped into the farmer's wagon. These cotton seed houses are a necessary part of every gin, and the seed are there held until a sufficient quantity are in hand to be delivered to the carrier for shipment. Under the authorities heretofore cited, com-

merce does not begin until these seed are delivered to the carrier for transportation.

SEVENTH: Plaintiff in Error is not denied the equal protection of the law.

(1) *Same penalty in effect on both foreign and domestic corporations.*

It is argued in the brief of Plaintiff in Error that the Act in question is unconstitutional, in that is discriminates in favor of individuals as against corporations, by prohibiting corporations owning or being interested in an oil plant, from operating gins, while the individuals may own both oil mill and gin, except that the individual cannot be interested in a corporation gin.

There is no discrimination as to the penalty imposed by the Act. A fine may be imposed by either the foreign corporation or the domestic corporation. The foreign corporation may also be expelled from the State, whereas the domestic corporation has its charter forfeited.

(2) *The Legislature has a wide discretion in making classification for legislative purposes.*

Of course, any classification between classes or persons, if it be arbitrary, will be held to be invalid. The Legislature has a wide discretion in the matter of classification for legislative purposes.

Huggins v. Home Fire Insurance Co., 107 Miss. 650; 65 So. 646.

The classification of persons or property must be based on some reasonable ground, and some rule different from mere arbitrary selection, and discriminations against persons and classes, of unusual character, are unconstitutional. But this will not be presumed to have been arbitrarily done.

Adams v. Standard Oil Co. of Ky., 97 Miss. 879; 53 So., 692.

St. John v. N. Y., 201 U. S., 633; 50 L. Ed. 896.

Minn. Iron Co. v. Kline, 199 U. S. 593; 50 L. Ed., 322.

Gulf, etc. R. R. Co. v. Ellis, 165 U. S., 150; 41 L. Ed. 666.

(3) *A reasonable classification between corporations and individuals is valid and not contrary to the equal protection clause of the Fourteenth Amendment.*

Hammond Packing Co. v. Ark., 212 U. S. 322; 53 L. Ed. 530.

Standard Oil Co. v. Tenn., 217 U. S. 413; 54 L. Ed. 817.

Adams v. Standard Oil Co. of Ky., 97 Miss., 879; 53 So., 692.

The case of *Ballard v. Oil Co.*, 81 Miss., 507, is cited as an authority by Plaintiff in Error, that the classification between corporations and individuals, in the Act under review, is arbitrary, and, therefore, unconstitutional.

On the first appearance of this case in the Supreme Court of Mississippi, the Ballard case was argued at length, as an authority for this proposition. The Court evidently did not agree with the interpretation of counsel in that case. It is very clear to my mind that the statute in question in the Ballard case was held to be unconstitutional, because it applied to *all* corporations as against individuals, and the opinion of the Court was that the statute was unconstitutional, because the classification of *all corporations* was arbitrary, and that the classification should have been limited to railroads, and corporations in a similarly hazardous business.

The Ballard case has frequently been cited to the Mississippi Supreme Court, and that Court has never placed the same construction upon this decision as has been contended for by Plaintiff in Error.

In the Ballard case the Mississippi Court did not have under consideration the *power* of the railway company to do a railway business within the State. The exact question involved in the case before this Court is the *power* to prohibit a corporation from doing a certain particular business within the State, under its police power. The question of the equal protection of the law arose in the Ballard case because the railway company had the *power* to do the particular business; but in this case, the *power* is the thing that is exercised by the Legislature, and the equal protection of the law defense does not and cannot arise until the corporation has the *power* to do the particular act.

In the case of *Adams v. Standard Oil Co.*, 97 Miss., 879; 53 So., 692, that Court held that the classification between the Standard Oil Company, engaged in peddling, and the aged and impecunious, and physically disabled person, from paying a peddler's license, is based on existing conditions, founded on reason and justice, and not violative of the equal protection clause of the Federal Constitution. This case was a clear distinction between an individual and a corporation, each of whom was doing a peddling business. The Ballard case was cited as an authority for the unconstitutionality of that statute, but the Mississippi Supreme Court held that the Ballard case only decided that the classification must be reasonable, and not arbitrary.

EIGHTH: Due process of law defense relied on in first trial in Court below apparently abandoned here.

It will be noted that the main defense in the original answer was that of denial of due process of law. This was the principle point argued in the Supreme Court of Mississippi on the first hearing. This proposition is not specified in the present hearing, as error, and I therefore take it to have been abandoned .

NINTH: The decree does not purport nor intend to prohibit Plaintiff in Error from doing an interstate business in Mississippi, but only prohibits local, or intrastate business.

This point is being argued in this Court for the first time. It was not presented or made to the Supreme Court of Mississippi. It will be manifest, from a reading of the original bill, that it did not contemplate the denial to Plaintiff in Error of the right to do an interstate business in the State of Mississippi. I think it very clear that the Act itself does not purport to deny this right to Plaintiff in Error. It is admitted, of course, by the State, that the Legislature could not deprive the foreign corporation of its constitutional right to do an interstate business in the State of Mississippi.

It would seem that the Plaintiff has fallen into error by contending that the decree (Tr. 112) of the lower Court provides for a forfeiture of the right to do an interstate business. That this contention is without merit is clearly shown by the last paragraph in the decree, wherein it is said:

> "It is further ordered by the Court that the said Crescent Oil Company be and the same is hereby perpetually enjoined from doing an intrastate or local business in the State of Mississippi, and its right to do such intrastate or local business in this State be, and the same is hereby forfeited," etc.

The inclusion in the decree of forfeiture of the right to do an intrastate business, would be an exclusion of any inhibition against the right to do an interstate business, under the familiar rule.

The Supreme Court of Mississippi, in passing on this case, stated the application of the decree generally as follows (Tr. 121):

> "The Oil Company in this case is perpetually enjoined from operating a cotton gin in

> Mississippi, and was given ninety days in which to dispose of its two gins in the State. The defendant Oil Company is also enjoined from doing an intrastate business in the State of Mississippi, and is enjoined from violating the Anti-Trust Law."

It was never suggested in brief or argument, in the Supreme Court of Mississippi, that the decree of the Chancellor was intended in anywise to prohibit the Oil Company from engaging in interstate business. It was argued by the Attorney General that contention of the Oil Company that it must own cotton gins in Mississippi, in order to operate its oil mill in Tennessee could not be sound, for the reason that the oil mill could buy seed in the open market in Mississippi, just as other oil mills were doing.

The attention of the Court, and of counsel for Plaintiff in Error, is directed to the fact that by inadvertance the quotation on page 5 of brief for Plaintiff in Error is stated to be a quotation. It is evidently intended as counsel's view of what the Mississippi Court substantially held.

I submit, therefore, that the decree of the Mississippi Supreme Court should be affirmed.

Rowe Robertson

Attorney General.

INSERT CONTAINING FIRST PARAGRAPH OF COURT'S OPINION, erroneously omitted in printed brief:

"Sykes, J., delivered the opinion of the court.

This is the second appearance of this case in this court. Upon the former appeal we held that chapter 162 of the Laws of 1914 (section 4750 et seq., Hemingway's Code), was constitutional. This case is reported in 116 Miss. 398, 77 So. 185, and reference is here made to that report for a more complete history of the case. Upon the remand of the case to the chancery court the oil company upon motion was allowed to make the following amendment to its answer:

Attorney General.

APPENDIX.

CRESCENT COTTON OIL COMPANY

vs.

STATE OF MISSISSIPPI.

121 Miss. 615; 83 So. 680.

OPINION OF THE MISSISSIPPI SUPREME COURT.

"Respondent, Crescent Cotton Oil Company, would show that it is engaged, and had been for a long time prior to the passage of the Act of 1914, mentioned in the said bill, engaged, in the operation of a cotton oil mill in the State of Tennessee, and in order to procure seed to run the said oil mill was during all of said time engaged in the buying of cotton seed in the State of Mississippi, and that all seed bought in the State of Mississippi were shipped in interstate commerce from the State of Mississippi into the State of Tennessee.

"This respondent would further show that conditions arose which rendered it impossible for a person not operating a gin to compete successfully with a person owning a gin in the purchase of cotton seed.

"Respondents would show that in order to stay in the market and continue to buy seed at Ruleville, to be so shipped in such interstate commerce, it was necessary for it to acquire and operate a gin plant, which it did in 1910, and has continuously operated same since that time, and that the ownership and operation of said gin was a means and instrumentality made use of by this respondent in carrying on its business of cotton seed buyer and interstate shipper of cotton seed, and that the operation of said gin was an incident to the business of cotton

seed buyer, and was a necessary and essential incident.

"Respondent would further show that to deprive it of the right to own and operate its gin plant will greatly burden and destroy its business of interstate commerce, in the shipment of cotton seed from the State of Mississippi into the State of Tennessee, and would be in conflict with the commerce clause of the Constitution of the United States, being subdivision 3, Article 1, Section 8. Respondent would further show that it is now engaged in no business in the State of Mississippi, and was not at the time of the passage of this Act or the filing of this suit, or at any time prior thereto, except such as is necessary to acquire cotton seed and ship them in interstate commerce and incident to such business of interstate shipper of cotton seed."

The testimony in the case for the complainant showed that at various and sundry times when the other cotton gins at Ruleville would not agree to sell to the defendant oil mill a certain amount of seed bought by them, the defendant would put down the price of ginning below its actual cost, for the purpose of destroying competition in ginning. The testimony also showed that the ginner has a great advantage in the buying of cotton seed over one who doesn't operate a gin; that at Ruleville it is almost the invariable custom of the cotton owner who wishes to sell his seed to sell it to the one who does his ginning. From the testimony it appears that the ginning business of the appellant company at Ruleville is operated in this manner. The owner of the cotton in the seed brings his cotton to the gin, and if he wishes to sell the seed to the gin the cotton is then ginned, and the seed blown into the seed house of the defendant. The lint cotton is then baled and gotten by its owner. It seems from this testimony that the defendant company actually negotiated for the purchase of the seed before the cotton was ginned. If the owner of the cotton does

not sell his seed to the gin the seed are not blown into the seed house of the gin, but are reloaded on the wagon of the owner. The record does not show what proportion of the seed of cotton ginned by the defendant company is thus purchased by it. One who operates a cotton gin is thereby enabled to buy a larger quantity of seed, and at a more reasonable price than he would did he not operate a gin. In other words, the advantages in operating a gin are that the ginner is thereby given a better opportunity to buy seed from the person who gins with him, and also probably at a lower price, than if he did not own and operate gin. The manager of the defendant oil company testified that in order for him to buy as much seed as he needed in his own mill business and at an advantageous price, it was necessary for him to operate cotton gins. He also testified that his mill operated eleven different cotton gins, two being in Mississippi, and the others probably in Arkansas and Tennessee. The testimony for the complainant in the case further shows that the seed bought by the other gins at Ruleville were sold to other oil mills. That it was usually customary for them to make arrangements with some oil mill to sell the seed bought by them to these mills for a certain profit. The testimony for the defendant also shows that it made money from its ginning operations at Ruleville. From all the testimony in the case, we think it proves that an oil mill in operating a gin is enabled thereby to purchase a larger volume of cotton seed at a lower price than is possible by being forced to go into the open market for cotton seed, or having to buy these seed from other gins.

The uncontradicted testimony in the case shows that all of the seed bought by the defendant company from its ginning customers were bought for the purpose of shipment, and were actually shipped to its oil mill in Memphis, Tenn. To use the phrase of the general manager of the defendant company,

this gin was used as a feeder for its oil mill in Memphis, Tenn., meaning that its principal object and purpose in running the gin was to enable it advantageously to purchase these seed from its customers for shipment to its oil mill in Memphis.

The decree of the chancery court found that the Crescent Cotton Oil Company was guilty of violating the above law, and also of violating the Anti-Trust statute. Chapter 119, Laws of 1908 (Section 3283, Hemingway's Code). The Oil Company in this decree is perpetually enjoined from operating a cotton gin in Mississippi, and was given ninety days within which to dispose of its two gins in this State, in default of which a receiver is to take charge of these gins and sell them at public auction to the highest bidder, in thirty days. The defendant Oil Company is also perpetually enjoined from doing an intrastate business in the State of Mississippi, and is enjoined from violating the Anti-Trust law. For the violation of Chapter 162 of the Laws of 1914 (Sections 4752-4756, Hemingway's Code), the defendant company was fined one thousand nine hundred dollars, and for a violation of the Anti-Trust law it was fined one hundred dollars. The decree also provides that the defendant Oil Company shall forfeit its right to do business in the State of Mississippi. From this decree this appeal was prosecuted.

It is the contention of the appellant, and ably presented in brief and oral argument, that the question now before the Court is different from that on former appeal; that the testimony here shows that the defendant Oil Company was engaged in interstate commerce, namely, in shipping cotton seed from Mississippi to its oil mill in Tennessee; that as an incident to this interstate commerce and in order to obtain what seed it needed at a reasonable price, it was necessary for it to operate the two cotton gins in Mississippi; that the operation of these two gins is but an incident of its interstate com-

merce business, namely, that of shipping cotton seed from Mississippi to Tennessee; therefore, that it is a burden on, and an interference with, interstate commerce to prohibit this mill under these circumstances from operating gins in Mississippi; that the gin is but an incident, and not the dominant object or business of the defendant company; that in this case the interstate commerce is the paramount business, and the operation of the gin a mere incident in aiding and assisting the carrying on of the interstate business. To sustain this contention the learned counsel for appellant rely upon the cases of

Pullman Palace Car Co. v. Kansas, 216 U. S. 65; 30 Sup. Ct. 232; 54 L. Ed. 385.

Western Union Tel. Co. v. Kansas, 216 U. S. 1; 30 Sup. Ct. 190; 54 L. Ed. 355.

Ludwig v. Western Union Tel. Co., 216 U. S. 146; 30 Sup. Ct. 280; 54 L. Ed. 423.

Harrison v. Railroad Co. 232 U. S. 318; 34 Sup. Ct. 333; 58 L. Ed. 621; L. R. A. 1915F, 1187.

In the first two cases above cited the statute of the State of Kansas was involved, which attempted to tax as a charter fee a given per cent. of the entire authorized capital stock of a foreign corporation as a condition of its continuing to do a local business in the State. This was held to be a burden and a tax on the company's interstate business and on its property located or used outside of the State. The Ludwig case is quite similar, involving a statute of the State of Arkansas.

The Harrison case holds that the right of a foreign interstate highway company to remove a case to the Federal court under proper circumstances cannot be prohibited by a State statute.

None of the points actually decided in any of these cases is authority or applicable to the point before the Court. The question of what is or what is not a burden on, or an interference with, interstate com-

merce is ably discussed in these opinions, especially in the case of *Western Union Tel. Co. v. Kansas, supra.* In that case Mr. Justice Harlan reviews at length the decisions of the Supreme Court of the United States bearing upon this question. It is to be noted, however, that every case above cited is one in which the principal business of the corporation was interstate business, though these corporations also did an intrastate business. In the case at bar it is admitted by counsel for appellant that the ginning of cotton is not interstate commerce. This is undoubtedly true under all of the authorities. But counsel contends that the ginning and the interstate commerce are so interwoven and intermingled that they are inseparably connected in this case because of the fact that appellant was engaged in interstate commerce in shipping the cotton seed from Mississippi to Tennessee. In this case, however, after a price had been agreed upon for the cotton seed, and the seed thereby sold to the defendant company, it was necessary for the seed to be separated from the cotton by the process of ginning. In this ginning process the seed of the appellant were blown into his seed house. After which time, either immediately or at a later date, the seed were shipped by appellant in interstate commerce from Mississippi to Tennessee. The buying of the cotton seed was not interstate commerce, the ginning of the cotton was not interstate commerce, and it only became interstate commerce after it had been tendered to and accepted by the interstate carrier for transportation from Mississippi to Tennessee. It makes no difference what the purpose of the appellant company was in erecting and operating its ginning plants at these two points in Mississippi. By their operation it was doing what is well recognized as a business, namely, the ginning of cotton within the State of Mississippi. It is well settled by all of the authorities that the State has a right to regulate its internal affairs, and a ginning plant operated in Missis-

sippi is of this classification. In one sense of the word, ginning is manufacturing seed cotton into lint cotton and cotton seed.

The purchase of the cotton seed is a separate and distinct transaction from the ginning of the seed, and the ginning of the seed is a separate and distinct transaction from the shipping of these seed from Mississippi to Tennessee. In other words, before these seed become a part of interstate commerce, or before this defendant company becomes engaged in interstate commerce in this transaction, it has to do three things, namely, purchase the seed, gin the cotton, and then deliver these seed to a carrier for interstate shipment. The fact that the defendant company had purchased the seed from the owner before the ginning of the cotton, and was the owner of the seed at the time of the ginnning, and intended at some future time to ship these seed from Mississippi to Tennessee, does not make the ginning of this cotton interstate commerce.

In the case of *Kidd v. Pearson,* 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346, the Supreme Court of the United States through Mr. Justice Lamar, in holding a law of the State of Iowa, authorizing the abating as a nuisance of a distillery used for the unlawful manufacture and sale of intoxicating liquors, not unconstitutional as an attempted regulation of interstate commerce, in part says:

> "We think the construction contended for by plaintiff in error would extend, the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its objects and scope. The language of the grant is: 'Congress shall have power to regulate commerce with foreign nations and among the several states,' etc. These words are used without any veiled or obscure signification. 'As men whose intentions require no concealment generally employ the words which most directly

and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said.' *Gibbons v. Ogden,* 22 U. S. (9 Wheat.) 9; 6 L. Ed. 23.

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term as given by this Court in *County of Mobile v. Kimball,* 102 U. S. 691, 702; 26 L. Ed. 238, 241, is as follows: 'Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does

not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests —interests which in their nature are, and must be, local in all the details of their successful management. * * *

"It is true that, notwithstanding its purposes and ends are restricted to the jurisdictional limits of the State of Iowa, and apply to transactions wholly internal and between its own citizens, its effects may reach beyond the state by lessening the amount of intoxicating liquors exported. But it does not follow that, because the products of a domestic manufacture may ultimately become the subjects of interstate commerce, at the pleasure of the manufacturer, the legislation of the state respecting such manufacture is an attempted exercise of the power to regulate commerce exclusively conferred upon Congress. * * *

" 'As has been often said, "Legislation (by a state) may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution," unless, under the guise of police regulations, it "imposes a direct burden upon interstate commerce," or "interferes directly with its freedom." *Hall v. DeCuir*, 95 U. S. 485 (24 L. Ed. 547, citing authorities). * * *

"*** The manufacture of intoxicating liquors in a state is none the less a business within that state because the manufacturer intends, at his

convenience, to export such liquors to foreign countries or to other states. * * *

"Does the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution. * * * There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the state; * * * that such goods do not cease to be a part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another state, or have been started upon

such transportation in a continuous route or journey." *Coe v. Errol*, 116 U. S. 517 (6 Sup. Ct. 475), 29 L. Ed. 715.

Another case directly in point is that of *Hammer v. Dagenhart*, 247 U. S. 251; 38 Sup. Ct. 529; 62 L. Ed. 1103; 3 A. L. R. 649; Ann. Cas. 1918E, 724. In this case the Court held that Congress did not have authority under the commerce clause of the Constitution to pass a law to control interstate shipments of child-made goods. In the course of his opinion Mr. Justice Day said:

> "The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the states who employ children within the prohibited ages. The act in its effect does not regulate transportation among the states, but aims to standardize the ages at which children may be employed in mining and manufacturing within the states. The goods shipped are of themselves harmless * * * when offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the commerce power.
>
> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation. 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to an-

other state.' Mr. Justice Jackson *in re Green* (C. C.), 52 Fed. 113,"—citing authorities.

The above two authorities from which we have so liberally quoted, and the authorities cited by them, sustain the proposition that it makes no difference for what purpose the appellant operated this gin or what was his intention with reference to the cotton seed he bought from the owner; that the ginning is an entirely separate and independent and local business, and is not interstate commerce; and this law which prohibits this mill from owning the gin is in no sense a burden on interstate commerce.

The testimony for the complainant in the case shows that the appellant attempted to destroy competition by putting down the price of ginning below its actual cost. This was not a violation of either section (m), (n), or (o) of the anti-trust law as alleged. That part of the decree so finding is therefore reversed, and the fine of one hundred dollars annulled and set aside. The remainder of the decree is affirmed.

Affirmed in part, and reversed in part.

Ethridge, J., having been of counsel, took no part in the decision of this case.